potential ceiling which, combined with an incremental cost floor based on TSLRIC could help point the way towards determining LEC costs.

If the Commission proceeds with setting cost and pricing standards, TDS Telecom emphasizes that the states are the correct and lawful forum for making essential fact-specific determinations. Their application of any such standard would have to include:

(a) a reasonable allocation of joint and common costs, to ensure that an incumbent LEC's retail residential and businesses rates are not forced to recover all overhead cost;[20]

(b) adjustments to ensure that an incumbent LEC will realize a reasonable profit for the mandated interconnection arrangement;

(c) adjustments for lost contribution to an incumbent LEC's other services (perhaps using more relaxed methods for measuring opportunity costs than the formal ECP model might require), particularly while there is only one "eligible" carrier designated for the rural area under Section 214(e) and while revised universal service mechanisms are developed and implemented.

The Commission might also adopt a reasonable ceiling for LEC prices. TDS believes that the ceiling should be the incumbent LEC's actual stand-alone costs for the requested interconnection services and network elements.

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[20]It is necessary to keep in mind in examining incremental cost proposals the requirement of section 254(k) that noncompetitive services must not be overburdened with more than a "reasonable share of the joint and common costs of facilities used to provide those services." The Commission must not adopt an interconnection standard that subsidizes competing entrants at the expense of public switched network customers.

Proxies Do Not Work to Identify Small and Rural LEC Costs
[NPRM Section IIB(2)(d)]

The NPRM also requests comment (¶ 134) on whether to use proxies to set boundaries for rates. These ceilings, the FCC believes, would prevent incumbent LECs from overpricing interconnection to discourage competition. The Commission is considering proxy proposals such as the Benchmark Cost Model that is already under study in connection with universal service implementation issues.

Proxies examined to date have been not been reliable in predicting rural LECs' costs because of the variations among small and rural LECs.[21] The joint Century Telephone Enterprises, Inc. and TDS Telecom Reply Comments in CC Docket No. 96-45 demonstrate that the underlying BCM assumptions do not reflect small and rural LECs' network characteristics.[22] The record in CC Docket No. 96-45 also contains an economic analysis submitted by BellSouth that explains the specific flaws in the BCM model and the general difficulty of developing any reliable proxy based on an "optimization model" divorced from diverse real-world conditions.[23]

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[21]Comments of TDS Telecommunications Corporation, CC Docket No. 80-286, pp. 56-64 (Oct. 10, 1995); Reply Comments of TDS Telecommunications Corporation, CC Docket 80-286, pp. 26-36 (Nov. 9, 1995).

[22]Reply Comments of Century Telephone Enterprises, Inc. and TDS Telecommunications Corporation, CC Docket No. 96-45, pp. 4-6 (May 7, 1996).

[23]Comments of BellSouth, CC Docket No. 96-45, Appendix, K. Gordon and W.E. Taylor, Comments on Universal Service, pp. 36-40 (April 12, 1996).

Neither this Commission Nor a State Commission May Lawfully
Require Symmetrical or Bill-and-Keep Compensation Arrangements
That Do Not Compensate Both Carriers Fairly for Transport and Termination
[NPRM Section IIC(5)]

Section 251 (b)(5) prescribes the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." The arbitration pricing standards in Section 252(d) further require the states to ensure that each carrier recovers its costs associated with such transportation and termination of calls originating on the other carrier's network. The recovered costs must be based on a "reasonable approximation of the additional costs of terminating such calls." The statute also allows arrangements that offset reciprocal obligations, including "arrangements that waive mutual recovery (such as bill-and-keep arrangements)."

The NPRM raises the prospect (¶ 234 et seq.) of requiring that rates be symmetrical for interconnecting carriers, based on a proxy or the incumbent LEC's costs. TDS Telecom opposes "symmetrical" pricing because such a standard necessarily fails to fulfill the basic statutory directive that each carrier recover its costs. TDS explained above why proxies are not lawful to identify the cost of rural and small LECs because they are unable to capture the differences among such LECs. Using an incumbent LEC's costs as a proxy also fails, in TDS's view, to identify the competitor's costs with sufficient particularity to meet the statutory reciprocal compensation standard. In this regard, the statutory standard for reciprocity would be especially inimicable to using one carrier's costs for both because to determine the other carrier's costs would be "complex and intrusive " (¶ 236). Such a standard would be neither symmetrical nor reciprocal -- nor lawful.

While the Act and any rules should not prohibit voluntary bill-and-keep arrangements between carriers, the Commission should not adopt rules requiring bill-and-keep arrangements for reciprocal compensation. First, pricing standards, as discussed above, are part of the Act's commitment of interconnection pricing to carrier negotiations or state arbitration when carriers cannot agree. Moreover, the fundamental requirement of compensation for each carrier's costs precludes any requirement or standard -- state or federal -- that denies compensation for costs incurred for transport or termination. That negotiating carriers may "waive mutual recovery,"-- necessarily involving a voluntary choice to forgo the right to be compensated -- does not mean that the government is free to waive compensation on a carrier's behalf. On the contrary, government pricing rules must meet the plain language standard of Section 252(d)(2)(A), and a bill-and-keep mandate does not.

While there may be possible circumstances where both the costs and the traffic flows between two carriers are so well matched that forgoing compensation would effectively function as a fair set-off, such equality is unlikely. More likely there will be large disparities in the carriers' costs for transportation and termination of each other's calls, as well as between each carrier's proportion of originating and terminating calls. Requiring a bill-and-keep arrangement would violate the mutual compensation standard. Some rural areas may be particularly vulnerable to undercompensation from bill-and-keep, for example, if one business customer, accounting for a large percentage of the rural incumbent's originating calls, became the new entrant's competitive target.

Conclusion

The Commission's proposals in the NPRM involve it in micromanagement of the terms, conditions and prices for interconnection under the 1996 Telecommunications Act at odds with the Act's interconnection plan based on:

- reliance on carrier negotiations rather than government intervention when agreement is possible, and
- reliance on state arbitration under clear and sufficient statutory standards only for terms, conditions and prices that are not settled by market-driven negotiations.

The Commission may establish minimum unbundling elements and prevent exclusionary pricing. But carrier negotiations and state arbitration require flexibility, not rigid rules, to respond to the facts of particular requests and diversity among rural LECs. And, even in the limited areas where Congress contemplated Commission elaboration through rulemaking, the Commission should wield its authority lightly to facilitate the operation of the Act's innovative structure for the transition to competition.

Therefore, the Commission should significantly reduce the scope of its intended intervention in interconnection and leave room for the marketplace and deregulation to begin to operate. The Commission should not require bill-and-keep or "symmetrical" arrangements because they do not assure reciprocal cost recovery. Rules should not deny reasonable and full cost recovery for incumbent LECs by imposing incremental cost methodologies or cost proxies, or require incumbent LECs to respond to insufficiently detailed and binding requests for interconnection. The Commission should also coordinate its universal service, access restructuring and interconnection proceedings to prevent unwarranted rate increases and encourage network development.

Respectfully submitted,

TDS Telecommunications Corporation

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CERTIFICATE OF SERVICE

I, Joann Leath, a secretary in the law firm of Koteen & Naftalin, L.L.P., do certify that on this 16th day of May, 1996, a true and correct copy of the foregoing "Comments of TDS Telecommunications Corporation" was served by United States First Class Mail, postage prepaid, on the following:

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